

**ORIGIN OF LIVESTOCK REGULATORY TEXT RECOMMENDATION
Western Organic Dairy Producers Alliance (WODPA)**

Date: December 2, 2013

Part 1 Regulatory Text

Subpart A—Definitions

§ 205.2 Terms defined.

Dairy farm. An agricultural operation where one or more lactating animals are raised and milked, and from which all or a portion of the milk produced is used, delivered, sold or offered for sale for human consumption or further processing.

Organic management. Management of an organic production or handling operation in compliance with all applicable production and handling provisions under this part.

Transitioned animal.

1. Dairy animal that was converted to organic milk production after 12 months of continuous organic management.
2. Offspring of a transitioning dairy animal fed nonorganic feeds, including third year feeds, at any time during her transition or while nursing.
3. Transitioning dairy animal offspring that consumed third year feeds.
4. Dairy animal that shall not be sold, labeled, or represented as organic slaughter stock.

Startup organic dairy farm. A newly created organic dairy farm created in the absence of an existing dairy farm.

Subpart C—Organic Production and Handling Requirements

§ 205.236 Origin of Livestock

(2) *Dairy animals.* Non-organic dairy farms, owned and operated by non-organic dairy producers, and startup organic dairy farms, have a onetime opportunity to transition dairy animals to organic milk production over a single 12 month period prior to production of milk or milk products that are to be sold, labeled, or represented as organic: *Provided, That,*

- (i) The one-time transition is carried out by the dairy farm on land it owns or leases. Responsibility for the transition cannot be assigned or subcontracted to any other person.
 - (ii) All dairy animals, from any source and any age, must end the transition simultaneously.
 - (iii) All dairy animals must be under continuous organic management throughout the transition.
 - (iv) All dairy animals in transition may consume crops and forages from land produced on the dairy farm in the 3rd year of organic land transition as specified in the organic system plan. Such crops and forages are not organic.
 - (v) Offspring born during or after the transition period shall be considered transitioned animals, unless:
 - (A) The mother consumed all organic feed during the 12 months immediately prior to giving birth to her calf;
 - (B) The mother consumed all organic feed while nursing her calf; and
 - (C) The calf received no third year feeds.
 - (vi) Transitioned animals may produce organic milk on any organic dairy farm: *Provided, That,* the animal was under continuous organic management at all times on a certified organic dairy farm.
 - (vii) All transitioned animals shall be differentiated from all other animals through the use of an ear tag identification system which shall use tags of a different color from all others used on the farm.
- (3) *Breeder stock.* Livestock used as breeder stock may be purchased from any source, *Except,* That, the breeder stock must be managed organically for one full year prior to giving birth to any animal that will be sold, labeled, or represented as organic.

(b) ***

(1) Livestock or edible livestock products that are removed from an organic operation and subsequently managed on a nonorganic operation shall not be sold, labeled, or represented as organically produced.

(2) Livestock removed from organic management shall not be returned to organic management.

(3) Transitioned animals shall not be sold, labeled, or represented as organic slaughter stock.

(4) Offspring of breeder or dairy stock born to a mother not under continuous organic management for at least one full year prior to birth shall not be sold, labeled, or represented as organic slaughter stock.

Part 2 Comments

Dairy farm. Currently there is no definition of “dairy farm” in the NOP regulations. We anticipate that the NOP will define “dairy farm.” In our recommendation we make the point that milking takes place on the dairy farm.

Organic management. Currently there is no definition of “Organic Management” in the NOP regulations. Some have expressed confusion as to the meaning of “organic management.” The recommended definition is intended to clarify the meaning of “organic management.”

Transitioned animal. Currently there is no definition of “transitioned animal” in the NOP regulations. We anticipate that the NOP will define “transitioned animal.” Further, we anticipate that § 205.236(a)(2) will provide that offspring born during or immediately after the transition period shall be considered transitioned animals, unless they received no third year feeds from the last third of gestation onward. Our recommended language is intended to assure that the definition includes offspring of transitioning animals. Our language identifies three additional classes of transitioned animals: those born of a mother who consumed third year crops, offspring that nursed a transitioning animal that consumed third year crops while nursing, and offspring consuming third year feeds. We believe that all classes of transition animals should be covered by the definition for clarity purposes.

Startup dairy farm. Currently there is no definition of “Startup dairy farm” in the NOP regulations. Our recommended language for § 205.236(a)(2) would clarify that only non-organic dairy farms and startup organic dairy farms would be entitled to the onetime transition opportunity. Thus, we are including a definition for startup dairy farm. This definition would allow any person to start an organic dairy from scratch. It would also permit the purchase of an abandoned farm previously used for dairy production.

§ 205.236(a)(2) *Dairy animals*. We anticipate that § 205.236(a)(2) *Dairy animals* will be amended to provide a onetime opportunity to transition conventional dairy animals to organic milk production over a single 12 month period prior to production of milk or milk products that are to be sold, labeled, or represented as organic. We are concerned that the anticipated NOP language might be interpreted as allowing all dairy farms, including those already certified, to transition non-organic dairy animals on a one time basis. Our recommended language would clarify that only non-organic dairy farms and startup organic dairy farms would be entitled to the onetime transition opportunity.

§ 205.236(a)(2)(i). The anticipated NOP language would tie the exemption to the farm, not the farmer. The recommended language is intended to clarify that the transition must occur on land owned or leased by the dairy farm qualified for the one-time transition and that the transition must be carried out by that operation and no other person as that term is defined in the NOP regulations.

§ 205.236(a)(2)(ii). We anticipate NOP language which would require that all dairy animals, from any source, end the transition simultaneously. We concur with the anticipated provision and have included language covering dairy animals, from any source and any age. We have done this because we anticipate that animals of all ages will be transitioned and we want to assure that all of the animals regardless of age are transitioned simultaneously.

§ 205.236(a)(2)(iii). We anticipate NOP language which would require that all dairy animals must be under continuous organic management throughout the transition. We concur with the anticipated language.

§ 205.236(a)(2)(iv). We anticipate that current subparagraph (i) will be amended to provide that all dairy animals in transition may consume crops and forages from land produced on the dairy farm in the 3rd year of organic land transition as specified in the organic system plan. We concur with the anticipated language but have added language to clarify that third year crops and forages are not organic.

§ 205.236(a)(2)(v). We anticipate NOP language which would require that offspring born during or immediately after the transition period shall be considered transitioned animals, unless they received no third year feeds from the last third of gestation onward. We concur that third year feeds are not organic. However, we have concerns about the term “immediately” and believes that “last third of gestation” is insufficient.

The third year crops and forages exemption is an exemption from the total organic feed requirement only available to transitioning dairy animals. Offspring of transitioning animals consuming nonorganic feeds therefore do not qualify as organic animals and should be designated as transition animals. To qualify as organic slaughter stock, offspring must be born to

an animal that was managed organically for a full year immediately prior to giving birth. Among other things, this means no nonorganic feeds. To retain the organic slaughter status the offspring's mother must consume all organic feed while nursing and the offspring must consume an all organic diet after weaning. Our recommended language is intended to make this clear.

§ 205.236(a)(2)(vi). We anticipate NOP language which would provide that transitioned animals may produce organic milk on any organic farm as long as the animal was under continuous organic management. We concur with this and have included language which would clarify that the animals must remain under the management of organic livestock producers certified for the production of organic milk.

§ 205.236(a)(2)(vii). We have included this provision to make transitioned animals readily identifiable and to assist certifiers in their certification and enforcement roles.

§ 205.236(a)(3). We anticipate NOP language which will continue the last third of gestation provision and provide that breeder stock shall be managed organically while nursing its own offspring.

The current dairy transition and breeder stock provisions are inconsistent and undermine organic integrity and consumer confidence. In addition to our recommendations regarding dairy transition, we are recommending a major rewrite of the breeder stock provision.

Our recommended language puts all livestock producers on equal footing and improves organic integrity by assuring that: 1) mother's milk qualifies as organic and 2) organic meat comes from animals born of animals that received a diet of organic products during the full gestation cycle and while nursing their young. Further, our language assures that animals treated with antibiotics, hormones, and other animal drugs will not pass those substances on to their young.

Our recommended language also brings the nursing of all young stock into compliance with section 205.237(a) which provides that "The producer of an organic livestock operation must provide livestock with a total feed ration composed of agricultural products...that are organically produced...." Up to now this provision has been inconsistently applied to young stock.

It is important to note that the current dairy transition provisions require the animal to be managed organically for one year prior to the production of organic milk. Thus, the animal's milk is not organic until the animal has been managed organically for one year. It is our position that mother's milk of all species fed during nursing must be organic for the animal to qualify as slaughter stock. Further, it is our position that to qualify as organic slaughter stock offspring must be born to an animal that was managed organically for a full year. Animals managed organically for less than a year do not produce organic offspring.

The “purchased from any source” language in our recommendation is consistent with the Organic Foods Production Act of 1990, as amended, which provides at § 6509(b) that “Breeder stock may be purchased from any source if such stock is not in the last third of gestation.”

While the recommended language is a tightening of the breeder stock regulation it is not in conflict with the Statute’s authorization. The Statute provides that “Breeder stock may be purchased from any source if such stock is not in the last third of gestation.” This would still hold true. What we are doing is bringing consistency to the standards by clarifying that the animal must be managed organically for one year for its: 1) milk to qualify as organic feed for its young and 2) young to qualify as organic slaughter stock.

§ 205.236(b)(1). Subparagraph (b)(1) has a word inversion. We recommend that it be corrected to read as presented.

§ 205.236(b)(2). Our recommended language clarifies that removing livestock from organic management and then returning them to organic management is a prohibited practice. An example of this would be calves born organic being managed conventionally (with or without removal from the farm), and then transitioned back to organic.

§ 205.236(b)(3). Our recommended language places the prohibition on the sale, labeling, and representation of transitioned animals as organic slaughter stock within its own subparagraph.

§ 205.236(b)(4). Our recommended language clarifies that the sale, labeling, and representation of offspring from mothers not under continuous organic management for at least a year prior to birth is a prohibited practice.